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SUBJECT: Kaohsiung Mayoral Election Nullified

REF: A) 2007 Taipei 0520 B) 2007 Taipei 0273, C) 2006 Taipei 4125

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¶11. (U) Summary: In a surprise to DPP and KMT alike, the Kaohsiung District Court on June 15 annulled the result of last December's Kaohsiung mayoral election in which the DPP's Chen Chu defeated KMT candidate Huang Chun-ying by a narrow margin. The same Court dismissed a separate but related suit filed by the KMT claiming vote manipulation and fraud. Mayor Chen Chu, who has announced she will appeal what is viewed as a quite controversial ruling, will remain in office pending the result of her appeal; the case could take up to six months to resolve. If the appeals court confirms the original ruling, there would be a by-election in which Chen Chu would be disqualified from running. End Summary.

¶12. (U) The Kaohsiung District Court issued rulings on June 15 concerning two controversial lawsuits (see reftels) surrounding the 2006 Kaohsiung mayoral election. In a surprise to DPP and KMT alike, the Kaohsiung District Court annulled the result of last December's Kaohsiung mayoral election. In a ruling that a number of observers here say is quite controversial from a legal perspective, the court found that DPP candidate Chen Chu's campaign office willfully and illegally engaged in campaign activity designed to interfere with the KMT's chance at a fair election result. At a time when all campaigning was to have ceased, Chen Chu's staff provided a video tape to selected television stations for broadcast. This videotape (see ref B) purportedly showed Huang's campaign aide distributing cash to voters mobilized for a Huang campaign rally and alleged that Huang was involved in vote-buying. The court found that in the absence of direct and concrete evidence at the time, this activity by the DPP on the eve of the election caused a serious negative impact on the results. The court ruled that this behavior hindered others from exercising their right to campaign and vote freely. Although the vote-buying accusations were later proved to be true against two KMT supporters, who were indicted for vote buying related to the videotaped incident, the court ruled in its verdict that "The tactic [of releasing the videotape to the media] . . . was enough to influence the election result."

¶13. (U) According to media reports, Chen Chu, with the backing of the DPP and President Chen, announced she would appeal, whereas Huang said he was ready to run for mayor again should the Taiwan High Court order a Kaohsiung mayoral by-election. According to the Election Law, the verdict on Chen Chu's appeal should be announced within six months after the appeal is filed, and a by-election should be held within three months of the final ruling if the ruling confirms the original court decision. According to the Public Official Election and Recall Law, a winning candidate who loses an

annulment lawsuit because they had been found to interfere with other parties' electoral campaigns or others' right to vote would be barred from any by-election. Therefore, if the appeal court confirms the original ruling, Chen Chu would be barred from running in a by-election.

¶4. (U) In a separate ruling, the court dismissed another lawsuit also filed by Huang Chun-ying after losing the Kaohsiung mayoral election. This ruling was the result of a recount ordered by the Kaohsiung District Court on February 1, 2007, to determine if the DPP had committed voter fraud (see refs A and B). The actual recount showed the certified 457 defective ballots would not have changed the election result, in which the difference now stands at 1,171 votes in favor of DPP Mayor Chen Chu. Based on the results of the recount, the Court dismissed Huang's request for nullification based on voter fraud.

¶5. (SBU) KMT Kaohsiung Party Chairman Hsu Fu-ming told AIT/K that the court ruling is an important milestone in Taiwan's democracy as it will help to stop practices of negative campaigning, libel and fraud. Hsu praised the presiding judge, who, he maintained, has written a new page in Taiwan's legal history. Hsu, however, criticized President Chen Shui-bian and high-level DPP government officials for making what he described as "inappropriate statements" against this court ruling. Hsu said the executive branch should not interfere in the judicial system, noting Taiwan needs an independent judiciary to ensure fair trials. Hsu further pointed out that Huang Chun-ying was never involved in vote-buying, declaring the KMT would sue DPP rivals if they continue to make such allegations. Hsu said this court ruling will give a big boost to morale in the pan-Blue camp and to the campaigns of pan-Blue candidates in both legislative and presidential elections, and in the by-election of Kaohsiung mayor if it occurs.

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¶6. (SBU) DPP Kaohsiung City Party Chairman Chang Chi-ming told AIT/K that the court ruling was "illogical and ambiguous," adding that his office has set up a public affairs and legal task force to deal with inquiries and other matters related to the court ruling. Chang stated that while he respects the judicial system, he cannot accept this ruling. Chang advised AIT/K to pay careful attention to the highly unusual dissenting opinion filed by Judge Ku Chen-hui, who disagreed with the legal reasoning of the ruling. Legislator Kuan Bi-ling confirmed to AIT/K that the DPP will appeal this ruling. Kuan suggested that the prevalence of KMT members among prosecutors and the judiciary led to this "mistaken judgment" by the Kaohsiung District Court.

¶7. (SBU) In a separate discussion in Taipei on June 16, KMT presidential candidate Ma Ying-jeou told AIT Chairman Ray Burghardt and Director Young that the KMT wants Mayor Chen Chu to step down and either allow new elections or yield the job to Huang. He acknowledged, however, that Chen Chu is almost certain to appeal. That could lead to a by-election sometime early next year, although probably not at the same time as the LY or Presidential elections, according to Ma. In another meeting, DPP candidate Frank Hsieh confirmed to the Chairman and Director that Mayor Chen Chu will remain in office while appealing the court decision, but he also opined that the DPP will at least consider the possibility of having an early by-election in Kaohsiung, if their analysis suggests this would help the DPP overall.

¶8. (U) Press reports are rife with speculation from academics and others that this annulment could endanger the smooth operation of city government work in Kaohsiung. Shi Cheng-feng, a professor of public administration at Tamkang University, was quoted as saying "The annulment could endanger the legitimacy of her [Chen Chu] victory and lead to a boycott by the pan-blue camp in the city council." Already Kaohsiung City Council Speaker Chuang Chi-wang, a KMT member, has demanded before the press that Chen step down, adding that pan-Blue city councilors will take further action soon.

Comment

¶9. (SBU) The court ruling for nullification came as a surprise to Kaohsiung residents, most of whom had not expected Huang Chun-ying's lawsuits to amount to anything. Announcement of the ruling on the eve of a four-day Taiwan holiday in which locals are concentrating on the Love River's Dragon Boat races seems to have tempered immediate reactions. AIT/K will follow up in the coming days with prosecutors, politicians and party officials to look into the political and complex legal aspects of this ruling, which has the potential both to hamper the work of Kaohsiung's current administration and to exacerbate the existing Blue-Green political confrontation.

THIELE

YOUNG